registration or identification requirement may be imposed." [19]

If the mere solicitation of funds for a lawful cause is sufficient conduct to validate the restrictive police power of a state, operation to achieve the objectives of a movement such as this statute describes is conduct sufficient to invoke federal regulatory power.

Clearly the aim of the statute before us is at action and conduct rather than at mere speech and assembly. A purpose to establish a totalitarian dictatorship, posited in paragraph (1) of Section 2 of the Act,[20] is itself a program of action rather than of mere discussion. Surely no one can be naive enough to believe that such a cataclysmic change in the system of government in this country could be accomplished without action as distinguished from words. And the terms used in paragraph (1) of Section 2 to describe the means adopted by the world Communist movement—infiltration into other groups, espionage, sabotage, terrorism—are terms of action. It is a program of action; it involves the Government. It can be met with action by the Government.

The opinions in *American Communications Ass'n* v. *Douds* [21] are pertinent. That case concerned paragraph 9(h) of the National Labor Relations Act as amended,[22] which denied the privileges of the National Labor Relations Board to labor organizations unless each officer filed an affidavit that he was not a member of the Com-

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[19] *Ibid.* To the same effect are Breard v. Alexandria, 341 U.S. 622, 641 *et seq.*, 95 L.Ed. 1233, 71 S.Ct. 920 (1951), and Giboney v. Empire Storage Co., 336 U.S. 490, 93 L.Ed. 834, 69 S.Ct. 684 (1949).

[20] Quoted *supra.*

[21] 339 U.S. 382, 94 L.Ed. 925, 70 S.Ct. 674 (1950).

[22] 61 STAT. 146 (1947), 29 U.S.C.A. § 159(h).

munist Party. Sustaining the constitutionality of the provision, the Supreme Court held, *inter alia*, that Congress has power to protect interstate commerce; that Congress had before it a mass of material which tended to show that Communists had infiltrated union organizations to make them a device by which commerce might be disrupted; that the remedy provided bore a reasonable relation to the evil which the statute was designed to reach; that Congress might reasonably find that Communists, unlike members of other political parties, represent a continuing danger of disruptive political strikes; that Congress, not the courts, is primarily charged with the determination of the need for regulation of activities affecting interstate commerce; that the legislative judgment that interstate commerce must be protected from a continuing threat of unlawful strikes is a permissible one; that the Act does not suppress belief nor prohibit those who hold beliefs from engaging in any above-board activity; and that the answer to the implication that if the statute were upheld the power of government over beliefs would be as unlimited as its power over conduct, is that that result does not follow "while this Court sits". The concurring opinions throw much light upon the problem.

It seems clear to us that, if Congress, in order to protect interstate commerce, can validly deny the privileges of union office to members of the Communist Party because of the program of that Party, it can, in order to protect the Government itself, impose restrictions upon adherents of a world Communist movement such as that described in this statute.

So we are of opinion that the field in which this statute lies is one in which Congress can impose restrictions upon First Amendment rights, and that the specific evil at which the statute is aimed is one which justifies remedial steps even though such steps are restrictions upon those rights. There remains the question whether

the statutory restrictions go beyond the bounds permitted to remedies for the evil here under attack. We postpone that discussion for the moment. See VI hereinafter.

IV

Our next consideration is the protection of the Fifth Amendment. Two clauses are involved in the argument—the protections against being compelled to be a witness against oneself and against being deprived of liberty or property without due process of law.

It is said that the revelation of the membership list, required upon registration, would tend to incriminate the members under the Smith Act,[23] and that the revelation would therefore be in violation of the privilege against self-incrimination. But the membership records of an organization are not protected by the privilege. If a grand jury subpoenaed the membership roll of the Party, the custodian of the list, whether or not he was an officer or member, would be compelled to produce. This is made amply clear by *United States* v. *White*.[24] In that case a grand jury had subpoenaed an official of a labor union to produce certain union records. He declined upon the ground that they might tend to incriminate the union or himself as an officer or individually. He based his claim upon a statute which made it a crime to induce any person employed in certain work to "kickback" part of his compensation. The Supreme Court held that the privilege did not apply. It held, first, that the privilege is essentially a personal one, applying to natural individuals only. It then held that the papers which the privilege protects must be the private property of the person claiming the privilege, or at

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[23] Blau v. United States, 340 U.S. 159, 95 L.Ed. 170, 71 S.Ct. 223 (1950).

[24] 322 U.S. 694, 88 L.Ed. 1542, 64 S.Ct. 1248 (1944).

least in his possession in a purely personal capacity, and that individuals acting as representatives of a collective group are not exercising personal rights. The Court said it was unnecessary to determine whether the official was or was not a member of the union, because in any event he could not invoke the privilege. The decision and the opinion apply to the present case. If labor union records are not subject to the privilege in order to protect union members from criminal prosecution, the records of a Communist-action organization, as that term is defined in Section 3 of this statute, are not within the protection. The records of a political party are more "impersonal" than are the records of a labor union.

That the records of the Communist Party are covered by the ruling in the *White* case is established by *Rogers* v. *United States*.[25]

The Party argues that the registration provisions of the statute before us do not call for the production of books or records but require the preparation and submission of a registration statement. That statement must contain (Section 7(d)) the name and address of the organization, the names and last-known addresses of the officers and members, an accounting of moneys received and expended, and, in the cases of officers and members who are known by more than one name, such other names. The Party says that such a statement is protected by the privilege even though books and records are not. But membership lists and accountings for money furnished by an organization are reproductions of or extracts from organization records. And if the records can be compelled oral testimony "auxiliary to the production" can be compelled.[26] Whether such rec-

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[25] 340 U.S. 367, 95 L.Ed. 344, 71 S.Ct. 438 (1951).

[26] United States v. Field, 193 F.2d 92 (2d Cir. 1951), *cert. dismissed*, 342 U.S. 908, 96 L.Ed. 679, 72 S.Ct. 303 (1952).

ords are kept formally or informally is immaterial. No additional explanatory testimony is required by this statute.

Moreover Congress could require Communist-action organizations to keep membership lists and accounting records. The opinion in *Bryant* v. *Zimmerman*[27] establishes that proposition. The provisions of this statute in effect make such a requirement. The Government requires many organizations to keep records. For example, it required all business houses to keep price records when prices were under Government control. To say that a Communist-action organization, as that term is defined in this statute, could not be required to keep records of its membership and its moneys is wholly untenable in our view. If these are matters of which organization records could be required, they fall squarely within the rule in the *White* case, *supra*.[28] As to a registration statement we think the *White* case applies.

Under the *White* case no privilege exists as to organization records—even for the individual who produces and signs them. But, even if the *White* case did not apply, the privilege would protect only the person called upon to sign or swear to the statement, and would protect him only in so far as his own name was involved. The privilege would not protect all members against one person's swearing that they are members, or protect one person against swearing that persons other than himself are members.[29]

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[27] 278 U.S. 63, 72, 73 L.Ed. 184, 49 S.Ct. 61 (1928). And see Shapiro v. United States, 335 U.S. 1, 92 L.Ed. 1787, 68 S.Ct. 1375 (1948), and cases there cited.

[28] Wilson v. United States, 221 U.S. 361, 55 L.Ed. 771, 31 S.Ct. 538 (1911). See discussion at 68 HARV. L. REV. 340 (1954).

[29] It might be urged that even if a person has no privilege against revealing his own membership he has a privilege against revealing the names of other members, since the

We assume for a moment, *arguendo*, that the *White* case does not apply here. We have, then, the problem of the individual who is required to sign the organization registration statement as an executive official of the Party. See Section 7(h) of the statute. By that act alone, even if he were to omit his own name from the list, he would be admitting that he is a member and an officer of the Party. We must make definite the question here posed. It is whether an order directing an organization to register is invalid because the officer who would be required to sign the registration statement would thereby be admitting a membership which might be a basis for a prosecution against him.

The statute provides (Section 4(f)) that the fact of a registration cannot be admitted in evidence in any criminal proceeding and that mere membership in a registered organization is not a violation of any criminal statute. No person called upon to sign is in danger of a prosecution which depends upon the bare fact of registration. So the protection here discussed is against the fringe effects (*e.g.*, a lead to evidence of some offense not premised upon mere membership) of signing the statement.

Several considerations are pertinent. In the first place the privilege against self-incrimination is a privilege which must be explicitly claimed. This rule has been firmly established.[30] We are urged to create an exception of law for the present case, but we see no justification for doing so. Then, since the privilege

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latter revelation might involve him in a conspiracy charge. The contrary was established by *Rogers* v. *United States*, *supra*.

[30] United States v. Monia, 317 U.S. 424, 427, 87 L.Ed. 376, 63 S.Ct. 407 (1943); Rogers v. United States, *supra*, 340 U.S. at 370; United States v. Murdock, 284 U.S. 141, 148, 76 L.Ed. 210, 52 S.Ct. 63 (1931).

must be claimed in order to bring it into play, it is by no means inevitable that a conflict would ensue between this order for registration and the privilege clause. We do not know as of now that the executive officers of the Party would claim the privilege; they might not. The only incriminatory results flowing from the act of signing would be corollaries to the fact of membership in the Party. This record shows that the Chairman and the Executive Secretary of the Party have never attempted to conceal their membership or their places of leadership. On the contrary they have proclaimed it often and publicly, both in writing and in speaking. We have no basis for assuming that they would claim protection against a mere revelation of their membership.

It is suggested to us that a statute or administrative order which places an individual in a position where he must claim his privilege in order to avoid incriminating himself is invalid. It is said claiming the privilege is incriminatory and so to force a person to claim the privilege is to force him to incriminate himself. We think the suggestion is not sound. One does not admit guilt by claiming the privilege; he merely says that an answer would tend to incriminate him, which means that it might involve him in a criminal proceeding.[31] Moreover, if the suggestion were good law, many avenues of legitimate inquiry would be shut off. For example, the statutes imposing punishment for refusal to answer questions would be invalid, because they compel people to claim the privilege.

In the second place it is by no means certain that all the executive officers of our petitioner Party have any privilege in respect to the fact of their membership in

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[31] This is the tenor of federal cases from United States v. Burr, 25 Fed. Cas. 38, No. 14,692e (C.C.Va. 1807), down to Hoffman v. United States, 341 U.S. 479, 95 L.Ed. 1118, 71 S.Ct. 814 (1951).

the Party. The precise provision of the Constitution is that no person shall be compelled to be a witness against himself in a criminal proceeding.[32] Practical considerations, obvious on the face of things, caused the courts to extend that language from its literal content to cover any compulsion to speak where the result would tend to incriminate. But an essential element in the latter doctrine is that the spoken matter would reveal or disclose something, or supply a needed confirmation of something suspected or only partly known. This is a note clearly struck in the cases dealing with the subject.[33] The Supreme Court said in the *Rogers* case:[34] "Since the privilege against self-incrimination presupposes a real danger of legal detriment arising from the disclosure, petitioner cannot invoke the privilege where response to the specific question in issue here would not further incriminate her."

The constitutional provision is not an empty legalism. It is a realistic barrier between the obligation of a citizen to give evidence and the injustice of inquisition by force. It was designed to achieve a precious protection. But, when it has no factual purpose under given circumstances, no reason exists for its application. If a required word does not in fact tend to incriminate the compelled witness, to interpose the barrier to the other-

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[32] See Huard, *The Fifth Amendment—An Evaluation,* 42 GEO. L.J. 345 (1954).

[33] Hoffman v. United States, 341 U.S. 479, 95 L.Ed. 1118, 71 S.Ct. 814 (1951); Mason v. United States, 244 U.S. 362, 61 L.Ed. 1198, 37 S.Ct. 621 (1917); Heike v. United States, 227 U.S. 131, 143-4, 57 L.Ed. 450, 33 S.Ct. 226 (1913); Brown v. Walker, 161 U.S. 591, 600, 40 L.Ed. 819, 16 S.Ct. 644 (1896); United States v. Burr, 25 Fed. Cas. 38, No. 14,692e (C.C.Va. 1807); *Ex parte* Irvine, 74 Fed. 954 (C.C.S.D.Ohio 1896).

[34] *Supra,* 340 U.S. at 372-3.

wise proper process of the law would be to make a mockery of a valued instrument. We turn to the facts before us. Some of these executive officials have been convicted and have served their sentences under the Smith Act, because they organized the Party.[35] Some of them, as we have said, have many times in public print and places asserted membership in the Party. Two members of the National Committee of the Party came forward voluntarily and testified in the proceeding at bar, stating that they are members. In no event could one of these persons be compelled to take the stand as a witness against himself in a criminal case; but in a non-criminal proceeding could he be required to state something which would not in actual fact be a valuable link in a prosecution against him? We do not decide the point, but we note in connection with the suggestion now under discussion that another revelation of the membership in the Party of some of its executive officials may not constitute any real danger of legal detriment to them or tend further to incriminate them. Those officials of the Party may not now have a privilege in respect to their Party membership.

In the next place we do not know and cannot assume what the Attorney General might do under the new Immunity Statute[36] if an executive officer of an organization called upon to sign an organization registration statement had a valid right to the privilege and claimed it. Under that statute the courts have broad powers to grant immunity, upon application of the Attorney General, in proceedings before them involving violations of the statute here involved. We do not decide the

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[35] United States v. Dennis, 183 F.2d 201 (2d Cir. 1950), *aff'd*, 341 U.S. 494, 95 L.Ed. 1137, 71 S.Ct. 857 (1951).

[36] 18 U.S.C. § 3486(c), Pub. L. No. 600, 83d Cong., 2d Sess. (Aug. 20, 1954).

validity or meaning of the Immunity Statute, but we note the possibility that under this new act a person under compulsion to sign a statement which would tend to incriminate him might be granted immunity from prosecution.

In the next place, even if the suggestion under discussion were true, *i.e.*, even if one or all executive officials of an organization validly invoked the privilege, so that no one could be compelled to sign the registration, the utmost result would be that the statute and order would be unenforceable. We think they could not be held to be invalid merely because they might conceivably be unenforceable in a given case. The problem of the practicality of enforcement arises when enforcement efforts are made.

The foregoing considerations lead us to a clear conclusion upon the point. We have before us an order addressed to an organization as such; it is not addressed to any individual. We conclude that neither the statute nor the order requiring an organization to register can be held invalid because of the possibility that the person or persons required to sign on behalf of the organization might be called upon to claim a privilege against self-incrimination, or that such a claim if made would be sustained, or that an application for immunity would not be made or would not be validly granted, or that the statute or order might not be enforceable.

Boyd v. *United States*[37] is urged upon us as contrary to the foregoing views. But we do not so read that case. In the first place it dealt with personal, private papers, and the Court made that fact a key to the decision. The production of private papers and the production of organization papers "differ *toto coelo*", the Court said. In later cases the Court has emphasized

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[37] 116 U.S. 616, 29 L.Ed. 746, 6 S.Ct. 524 (1886). For a discussion of the *Boyd* case see 8 WIGMORE, EVIDENCE § 2184 (3d ed. 1940).

that feature of the *Boyd* case.[38] In the second place the statute in that case authorized the compulsory production directly for use in a forfeiture case under a criminal statute. In the case before us, as we have sufficiently noted, the revealed membership is not *per se* a violation of any criminal statute, and the fact of the registration cannot be shown in evidence in any criminal case. We think the *Boyd* case is not in point here.

The information required on a registration statement as to members with more than one name poses a slightly different problem. In so far as the other names appear on organization records, they are covered by the foregoing. In so far as they are names of persons other than the person signing the statement, they have no privilege in his hands. Whether an individual known by several names, and called upon to sign or swear to a registration statement, is privileged to refuse to reveal his own other names is not before us; decision upon it must await the happening and a claim of the privilege.

United States v. *Daisart Sportswear*,[39] relied on by the Party, does not apply to the problem before us. It concerned the one individual who testified under compulsion and who claimed immunity.

The Party says the requirement of Section 8 of the statute that an individual member register himself as a member violates the protection against self-incrimination and so invalidates the statute. This section provides that

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[38] Wilson v. United States, *supra* note 28, 221 U.S. at 377; Essgee Co. v. United States, 262 U.S. 151, 158, 67 L.Ed. 917, 43 S.Ct. 514 (1923); Nathanson v. United States, 290 U.S. 41, 47, 78 L.Ed. 159, 54 S.Ct. 11 (1933); United States v. White, *supra*, 322 U.S. at 699; Shapiro v. United States, 335 U.S. 1, 33, 92 L.Ed. 1787, 68 S.Ct. 1375 (1948).

[39] 169 F.2d 856 (2d Cir. 1948), *rev'd on other grounds sub nom.* Smith v. United States, 337 U.S. 137, 93 L.Ed. 1264, 69 S.Ct. 1000 (1949).

an individual member must register himself as a member if an organization finally ordered to register fails to do so, or if upon registering and filing its membership list the organization fails to include the member's name. The section operates when an organization does not register or fails to register accurately. It is an alternate, rather than an attachment, to the registration of the organization. As such it poses a separate and independent problem from that posed by the requirement for organization registration. To reach the problem posed under Section 8 we would have to assume that the Party will not register if it is finally ordered to do so, or that if it registers its membership list will be incomplete. But we cannot make such assumptions. An opinion based upon them would be merely an advisory opinion, which we have no power to render. We have before us only an order requiring the organization to register. Section 8 is separable; if it were held to be invalid its fall would not affect organization registration; it is not before us; its validity is not involved in the order here under review. We do not consider any problems which might be posed by it.

V

The due process of law clause is the basis for two contentions by the Party. The first is that the application of the sanctions to members of a registered organization deprives those members of rights and privileges solely because of their membership in an organization, and that this violates due process. The second contention is that the statute violates procedural due process.

We come first to the sanctions imposed upon members respecting Government and defense facility employment (Section 5(a)(1)) and applications for passports (Section 6). One must note that the condition upon which these sanctions apply is membership; it is not a mere listing as a member in a registration statement. One of

the two provisions refers to "any member of such organization, with knowledge or notice that such organization is so registered or that such order has become final"; the other section contains similar language. Membership in an organization is of course a fact, and if one is actually a member he knows it. The statute before us requires that before these sanctions apply a member must have "knowledge or notice" that the organization has registered or been finally ordered to register. If the organization has registered as a Communist-action organization without an order to do so, it has voluntarily agreed that it is such an organization. If a final order has been entered against it, its nature as such an organization has been determined by full administrative proceedings, fully reviewed by the courts. So notice or knowledge of registration carries knowledge or notice of the nature of the organization; its nature has been either admitted or established. The statute provides for notice to every listed member of a registered organization, and it is to that notice that the statute here refers. If a member has either notice of the registration or knowledge of it through some other means, the sanctions apply to him. Thus there are three requisites for application of the sanctions to members: (1) The person must be a member; (2) the organization must be registered or finally ordered to register; and (3) the person must have knowledge or notice of the registration or order.

There is no novelty in the application of civil prohibitions to members of organizations. For example, an officer, director or employee of a stock investment house cannot be an officer, director or employee of any Federal reserve bank;[40] and a member of one political party cannot become a member of the Federal Communications

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[40] 48 STAT. 194 (1933), as amended, 12 U.S.C.A. § 78.

Commission if a majority of that Commission are already members of that party.[41]

That a sanction may be imposed upon members of an organization which advocates the overthrow of the Government by force is established by *Adler* v. *Board of Education*[42] and *Wieman* v. *Updegraff*.[43] In the *Adler* case the Supreme Court held:

> "Membership in a listed organization found to be within the statute and known by the member to be within the statute is a legislative finding that the member by his membership supports the thing the organization stands for, namely, the overthrow of government by unlawful means. We cannot say that such a finding is contrary to fact or that 'generality of experience' points to a different conclusion. Disqualification follows therefore as a reasonable presumption from such membership and support." [44]

In the *Wieman* case an Oklahoma statute required state employees to take an oath that the affiant was not affiliated with any agency, etc., officially determined by the United States Attorney General to be a subversive organization. The Supreme Court held the statute invalid. The Court distinguished *Garner* v. *Los Angeles Board*,[45] the *Adler* case, and *Gerende* v. *Election Board*,[46] on the grounds that in each of those cases knowledge on the part of the employee was implicitly or explicitly required. In *Wieman* the Court found that the oath would exclude persons solely on the basis of organizational

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[41] 48 STAT. 1066 (1934), as amended, 47 U.S.C.A. § 154.

[42] 342 U.S. 485, 96 L.Ed. 517, 72 S.Ct. 380 (1952).

[43] 344 U.S. 183, 97 L.Ed. 216, 73 S.Ct. 215 (1952).

[44] *Supra*, 342 U.S. at 494-5.

[45] 341 U.S. 716, 95 L.Ed. 1317, 71 S.Ct. 909 (1951).

[46] 341 U.S. 56, 95 L.Ed. 745, 71 S.Ct. 565 (1951).

membership regardless of their knowledge concerning the organization. It said: "Indiscriminate classification of innocent with knowing activity must fall as an assertion of arbitrary power." [47]

In *Bryant* v. *Zimmerman, supra,* the Supreme Court upheld the validity of a requirement that certain organizations report their membership lists against an attack based upon the due process clause. The discussion is apt here.

We think the requirement in this statute that a member have knowledge or notice of the registration of the organization, which means that he has knowledge or notice of the nature of the organization, before these sanctions apply to him, satisfies the due process clause so that sanctions could be premised upon membership under the doctrine of the *Adler* and similar cases.

A special argument is made by the Party in respect to the denial of passports by Government officers under Section 6(b). That section provides that officials shall not issue a passport to an individual if they know the individual is a member of a registered Communist-action organization or if they have reason to believe the individual is a member of such an organization. The latter clause gives rise to the problem. Under it an official may deny the passport if he merely "ha[s] reason to believe". If that provision is valid, knowledge on the part of the individual as to the nature of the organization to which he is supposed to belong would not be a requisite for denial of the passport. We do not pass upon the point, because such a situation is not before us; it does not depend upon registration but upon considerations not necessarily even factual. The provision is severable.

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[47] *Supra,* 344 U.S. at 191.

In this part of its argument the Party groups with the sanctions just discussed the penalty provided by Section 15(a)(2) for individuals who fail to comply with an individual's obligation to register. But such a penalty does not flow from organization registration; it is an alternate provision, not before us. We do not consider it.

We postpone to Part VI of this opinion consideration of the provisions relating to aliens and denaturalization.

We have next the question of procedural due process of law. This general question involves several specific questions. Is procedural due process of law afforded: (1) An organization from which registration is demanded? (2) An organization faced with sanctions to be imposed upon it because it is registered? (3) An individual listed, or proposed to be listed, as a member of a registered organization? (4) An individual threatened with sanctions because of membership in a registered organization? (5) An individual threatened with criminal prosecution by reason of membership in a Communist-action organization?

We have already noted that the provision for the registration of an organization, which involves a determination of its nature, complies with procedural due process. In so far as sanctions—identification of mail and broadcasts and denial of tax benefits—imposed upon an organization, registered or ordered to register, are concerned, the due process afforded by the procedure required for compulsory registration constitutes due process as to the results inherent in the registration and applicable to the registering organization as an organization. In so far as the listing of a name of an individual is concerned, the statute contains detailed provisions whereby one who has been listed erroneously or who leaves the organization can secure the removal of his name from the list before the list is made public. It provides for an individual notice of a listing (Section 7(g)), an application to the Attorney General (Section

13(b)), an appeal to the Subversive Activities Control Board (Section 7(g) and Section 13(b)), and review by the courts (Section 14). In so far as the rights of a person who denies the fact of membership are concerned, not only the foregoing procedure in respect to the listing but all other procedures ordinarily open to a person asserting such a denial are left open in this statute.[48] This statute does not negate any procedural rights otherwise available to a person entering upon a factual controversy. We do not attempt to determine here the validity of the administrative procedures ordinarily open to Government employees and to applicants for passports. This statute leaves all such procedures available for the determination of a disputed claim that a person is a member of a registered organization. Neither the Lloyd-LaFollette Act,[49] which protects Government employees, nor the Secretary of State's procedural passport regulations[50] are repealed or amended by this Act. This statute itself imposes no restriction upon procedural due process. Whether some other statute or regulation does so is not now before us. Moreover the courts are open

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[48] The Act as originally passed provided (Sections 5(c) and 6(c)) that a person who is listed on a membership list in a registration statement and who inaugurates a contest against such listing should not be deemed to be a member of an organization for purposes of the sanctions during the period of the contest and until he has lost and his name has been published as a member. Those provisions were repealed by Section 7(c) of the Communist Control Act of 1954, 68 STAT. 775, 778, and so one who is a member is subject to the sanctions without the interval of immunity. But the presence of such an immunity period is not a due process requirement. Due process is afforded if a person has full opportunity to get off a list and full opportunity to prove he is not a member if he is asserted to be one and thus liable to sanctions or penalties.

[49] 37 STAT. 555 (1912), as amended, 5 U.S.C.A. § 652.

[50] 22 CODE FED. REGS. Part 51.

for an ousted Government employee,[51] and would be open to a person denied a passport under the requirement of this statute. The reviewability of the State Department's denial of a passport in ordinary cases is a disputed question[52] because of the official discretion involved. The statute before us neither adds to nor detracts from that general reviewability. But, certainly, so far as a denial might be premised upon a mandatory requirement of this statute, *e.g.*, Section 6, the courts would be open for review of the action under the statute. In so far as due process is required preliminary to any damage or inconvenience caused by the publication of a listing of a person's name as a member, the statute protects him from publicity until he has exhausted the process, already described, available to test the presence of his name on the list. In so far as criminal prosecutions are concerned, the statute (Section 4(f)) provides: "Neither the holding of office nor membership in any Communist organization by any person shall constitute per se a violation of * * * any * * * criminal statute. The fact of the registration of any person * * * as an officer or member of any Communist organization shall not be received in evidence against such person in any prosecution * * * for any alleged violation of any * * * criminal statute."

Thus it seems to us that procedural due process is afforded in each of the several situations presented to us for consideration in this respect.

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[51] See Roth v. Brownell, 93 U.S. App. D.C. —, 215 F.2d 500 (D.C.Cir. 1954), *cert. denied*, 23 U.S.L. WEEK 3108 (U.S. Oct. 25, 1954).

[52] Note, *Passports and Freedom of Travel: The Conflict of a Right and a Privilege*, 41 GEO. L.J. 63 (1952); Comment, *Passport Refusals for Political Reasons: Constitutional Issues and Judicial Review*, 61 YALE L.J. 171 (1952).

VI

We come now to examine severally, in respects not already discussed, the restrictions (or so-called "sanctions") imposed by the statute upon registered organizations and their members. This includes the question whether each sanction is reasonably related to the substantive evil at which Congress was aiming, a pertinent inquiry under the First Amendment. See III hereinabove.

When a Communist-action organization is registered the following consequences ensue: (1) No member with knowledge or notice of the registration can have nonelective Government employment or employment in a defense facility (Section 5); (2) no member can obtain a passport (Section 6); (3) organization mail and broadcasts must be identified as originating with a Communist organization (Section 10); (4) alien members are excludable, deportable, and ineligible for naturalization (Sections 22 and 25);[53] (5) tax deductions and exemptions are withdrawn (Section 11); and (6) certain members are subject to denaturalization (Section 25).[54]

Preliminarily we note that the requirement for registration in and of itself presents no difficulty. It is no more than we customarily require of many organizations, such as lobbyists[55] and foreign agents,[56] and even of doctors, lawyers, restaurants and barbers, who are required

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[53] Carried forward in Sections 212(a)(28)(E); 241(a)(6)(E), and 313(a)(2)(G) of the Immigration and Nationality Act of June 27, 1952, 66 STAT. 185, 205, 240, 8 U.S.C.A. §§ 1182(a)(28)(E), 1251(a)(6)(E), 1424(a)(2)(G).

[54] Carried forward in Section 340(c) of the Immigration and Nationality Act of June 27, 1952, 66 STAT. 261, 8 U.S.C.A. § 1451(c).

[55] 60 STAT. 841 (1946), 2 U.S.C.A. § 267. See United States v. Harriss, 347 U.S. 612, 98 L.Ed. —, 74 S.Ct. 808 (1954).

[56] 52 STAT. 632 (1938), as amended, 22 U.S.C.A. § 612.

to register and obtain licenses. The requirement for an accounting of moneys received and expended is no more than is required of any political party,[57] and since petitioner claims to be a political party we see no invalidity in the application to it of such a requirement. The requirement that a political organization list its members is similar to the customary requirement in the states that persons participating in the activities of a political party, such as primaries, conventions, etc., register publicly as members.

The provisions respecting employment by the Government are in Section 5 of the statute. Congress has forbidden political activity to Government employees, and the Supreme Court has sustained the enactment.[58] The power in this respect as it concerns members of Communist organizations was specifically sustained in *Adler* v. *Board of Education, supra*, as to the public schools. The general power over executive employees was discussed at length in *Bailey* v. *Richardson*.[59]

The restrictions upon Government employment are directly related to the substantive evil at which Congress was aiming in this statute. Infiltration of government by world Communist adherents is one of the specified evils recited by the Congress, and certainly a prohibition of Government employment to such adherents is a direct attack upon that evil. Indeed we can think of no more direct relationship than that which would exist between the objectives of the world Communist movement, as it is described in this statute, and the occupation of Government positions by members of a Communist-action organization.

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[57] 43 STAT. 1071 (1925), 2 U.S.C.A. § 244.

[58] United Public Workers v. Mitchell, 330 U.S. 75, 91 L.Ed. 754, 67 S.Ct. 556 (1947).

[59] 86 U.S. App. D.C. 248, 182 F.2d 46 (D.C.Cir. 1950), *aff'd*, 341 U.S. 918, 95 L.Ed. 1352, 71 S.Ct. 669 (1951).

We think the considerations which validate power to forbid Government employment likewise support the power to forbid defense facility employment. The latter employment is sensitive business, and it would be sheer folly to say that the Government cannot close the gates of such facilities against those who are knowingly members of organizations under the dominion of a foreign government.

The provision respecting passports is in Section 6 of the statute. A passport is addressed to foreign governments and requests for the holder "permission to come and go as well as lawful aid and protection."[60] An American passport, says Hackworth,[61] "indicates that it is the right of the bearer to receive the protection and good offices of American diplomatic and consular officers abroad and requests on the part of the Government of the United States that the officials of foreign governments permit the bearer to travel or sojourn in their territories and in case of need to give him all lawful aid and protection." Only rudimentary reasoning is necessary to a conclusion that the Government may validly decline to confer its diplomatic protection upon, and to request foreign governments to give aid and protection to, a member of an organization operating primarily to achieve the objectives of a world movement such as the Communist movement is defined to be in the statute. Surely a government owes no duty of protection to those who, dominated by a foreign organization, seek its overthrow. Congress can narrow the scope of the passport privilege, so long as the limitation is reasonable.

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[60] United States v. Browder, 113 F.2d 97, 98 (2d Cir. 1940), quoting BORCHARD, DIPLOMATIC PROTECTION OF CITIZENS ABROAD.

[61] 3 HACKWORTH, DIGEST OF INTERNATIONAL LAW c. 10, § 259 (1942).

Under current rules a person must have a passport in order to leave the United States to go outside this hemisphere.[62] It is urged that that is a restriction upon liberty and is without due process because unrelated to the congressional purpose. But we need not, and do not, enter upon consideration of that question, because, whatever else a passport may validly do, it serves the purposes enumerated by Hackworth, *supra*, and that feature is enough to support denial. We think this provision is directly related to the congressional purpose in this statute and is otherwise valid.

The provision respecting the identification of mail and broadcasts (Section 10) applies to a registered organization, not to the individual members as such. It requires the mail of such an organization to bear the label "Disseminated by ————, a Communist organization". It requires similar identification of broadcasts. No censorship of content is imposed. Congress has frequently imposed limitations upon the use of the mails[63] and on broadcasting.[64] All paid broadcasting must be identified by the name of the person paying for it.[65] So far as our present petitioner is concerned, there seems little to choose between identification as "The Communist Party", as it would be identified without the statute here involved, and

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[62] 22 CODE FED. REGS. §§ 53.1, 53.2.

[63] 25 STAT. 874 (1889), 39 U.S.C.A. § 256; REV. STAT. § 3224, as amended, 39 U.S.C.A. § 259; REV. STAT. § 4041, as amended, 39 U.S.C.A. § 732; 52 STAT. 114 (1938), 15 U.S.C.A. §§ 52, 53; 48 STAT. 77 (1933), as amended, 15 U.S.C.A. § 77e.

[64] 48 STAT. 1088 (1934), as amended, 47 U.S.C.A. § 315; 48 STAT. 1089 (1934), 47 U.S.C.A. § 317. See Trinity Methodist Church, South v. Federal Radio Comm'n, 61 App. D.C. 311, 62 F.2d 850 (1932), *cert. denied*, 288 U.S. 599, 77 L.Ed. 975, 53 S.Ct. 317 (1933).

[65] 48 STAT. 1089 (1934), 47 U.S.C.A. § 317.

as "a Communist organization", which is what this statute requires. Moreover broadcasting is permeated with a public interest,[66] and surely the people are entitled to know when an organization which falls within the definition of a Communist-action organization in this statute is addressing them over the air. All political parties identify themselves on the air; otherwise their appeals are useless. The only conceivable reason for anonymity of political broadcasting is a purpose of deception, and that purpose is enough to validate a requirement of identification.

All publications relating to candidates for elective office in the Federal Government must be identified, showing the names of the persons, associations, committees and corporations responsible for the publication or distribution, under heavy penalties for failure to do so.[67] Newspapers must plainly mark as "Advertisement" all editorial or other reading matter for which a consideration is received.[68] All agents of foreign governments must identify "political propaganda" sent through the mails.[69] It is difficult for us to perceive much substance in the claim that the provisions for the identification of the mail and broadcasts of an organization finally required to register under this Act are invalid. First principles protect the right of the public to be advised of the identity of an organization found to be promoting the objectives of the world Communist movement, as that movement is here defined.

The provisions respecting aliens, which were in Sections 22 and 25 of the statute before us, have been carried

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[66] National Broadcasting Co. v. United States, 319 U.S. 190, 226-7, 87 L.Ed. 1344, 63 S.Ct. 997 (1943).

[67] 62 STAT. 724 (1948), as amended, 18 U.S.C. § 612.

[68] 37 STAT. 554 (1912), 39 U.S.C.A. § 234.

[69] 52 STAT. 632 (1938), as amended, 22 U.S.C.A. § 614.

forward into the 1952 Immigration and Nationality Act.[70] Under the latter provisions sanctions apply to aliens who are members of organizations registered under the Act now before us. We therefore consider them. That membership in the Communist Party is a valid ground for the deportation of an alien is settled by *Galvan* v. *Press*,[71] and that it is a valid ground for denial of bail to an alien pending deportation proceedings is settled by *Carlson* v. *Landon*.[72] There is nothing on the subject to be added to the opinions in those cases. They rest upon the power of Congress over the admission of aliens and the rights of aliens to remain in this country.[73] The rationale upon which the Supreme Court there validated the proscription of alien members of the Communist Party applies directly to members of any Communist-action organization as defined in this statute. We think those rulings govern exclusion and naturalization as well as deportation and bail.

Section 25 of the statute before us[74] also contained a provision respecting denaturalization, which was carried forward as Section 340(c) of the Immigration and Nationality Act of June 27, 1954.[75] It established as *prima facie* evidence[76] in a denaturalization proceeding proof that the person within five years of naturalization became

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[70] See note 53 *supra*.

[71] 347 U.S. 522, 98 L.Ed. —, 74 S.Ct. 737 (1954).

[72] 342 U.S. 524, 96 L.Ed. 547, 72 S.Ct. 525 (1952).

[73] See Shaughnessy v. Mezei, 345 U.S. 206, 97 L.Ed. 956, 73 S.Ct. 625 (1953).

[74] Amending Sec. 305(d) of the Nationality Act of 1940.

[75] See note 54 *supra*.

[76] The full phrase is "prima facie evidence that such person was not attached to the principles of the Constitution of the United States and was not well disposed to the good order and happiness of the United States".

a member of, among others, a registered Communist-action organization. The necessities of proof in a denaturalization case involving foreign allegiance are spelled out in *Knauer* v. *United States.*[11] A denaturalization does not flow automatically from registration; a regular proceeding for the purpose must be brought. No such case is before us, and we therefore express no views upon the problem. Its solution must await a specific test.

The sanctions with reference to tax exemptions and deductions, which are in Section 11 of the Act, forbid income tax deductions for contributions to a registered organization and deny income tax exemptions to such organizations. These allowances and denials fall within the field of congressional grace so long as a reasonable basis appears. This is too well established to require citation. We think these provisions clearly valid.

Concluding, then, our discussions of the several provisions applicable to registration and to registered organizations and their members, we find that they are reasonably related to a remedy for the evil depicted in this statute, that the impingement upon First Amendment rights which they effect is not beyond that permissible for the statutory purpose, and that the provisions are not violative of Fifth Amendment rights.

VII

The Party makes a number of additional attacks upon the statute as a whole. It says it is an "outlawry" statute. But many valid statutes declare specified activities to be unlawful. The critical questions concerning a so-called "outlawry" statute are whether the matter prohibited is eligible for prohibition and whether the procedures provided protect the rights of those involved. We have discussed those features of this statute.

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[11] 328 U.S. 654, 90 L.Ed. 1500, 66 S.Ct. 1304 (1946).

The fact, if it be a fact, that no organization could survive registration under the Act is no detriment to the validity of the statute. In the first place, if an organization is actually operating primarily to achieve the objectives of a foreign organization dedicated to the establishment of a totalitarian dictatorship in this country by other than constitutional processes, we perceive no constitutional obstacle to its outlawry. In the second place the inability of an organization to survive registration under this Act arises, if it does arise, not from the terms of the statute but because of the extreme unpopularity of the revealed foreign domination, of world dictatorship, and of the Communist world leadership. This statute does not forbid any person to be a member of the Party, but the Party says that when its members are identified their livelihood and liberty will be jeopardized. But a statutory requirement is not invalid merely because of results which may flow from the unpopularity of the cause affected. Popularity of men and movements varies with time and place. In some periods of our history friendship with Great Britain was unpopular, and at other periods friendship with Russia was popular. It would indeed be senseless to propose that popular causes could be subjected to statutory restrictions but that unpopular ones could not be. Unpopular causes are entitled to the privilege of the public arena, but they must sustain the severe burdens of that arena. So long as they are not denied the privilege, they cannot complain that their unpopularity frustrates them or that the observing public visits upon them its displeasure. Stoutness is indeed a requisite for those who would contest in that arena.

Petitioner urges that the statute contains a predetermination of its nature as a Communist-action organization—a built-in verdict against it. We find no such predetermination. Petitioner is not mentioned. Whether it does or does not fall within the description in the

statute is a matter of evidence, just as it is in respect to every other respondent to a petition before the Board. A statute is not necessarily null merely because it fits a known person. Many valid statutes do.

Petitioner says the statute is a bill of attainder and therefore void. We think it is not. The opinion in the *Garner* case [78] discusses and disposes of the point in so far as it relates to Government employ. The remainder of the point is covered by that part of the opinion in *Douds* in which bills of attainder are discussed.[79] Referring to the familiar cases the Court said:

> "But there is a decisive distinction: in the previous decisions the individuals involved were in fact being punished for *past* actions; whereas in this case they are subject to possible loss of position only because there is substantial ground for the congressional judgment that their beliefs and loyalties will be transformed into *future* conduct."

We think that doctrine applies to the case at bar.

VIII

The next main subject in our consideration of the statute itself is our petitioner's attack upon Section 13(e). That section enumerates eight evidentiary considerations which it requires of the Board in determining whether an organization is Communist-action within the statutory definition. Petitioner says the section is invalid for lack of due process. It says the provisions are irrelevant, vague, and without any rational relation to the derivative facts to be established.

The eight subparagraphs of Section 13(e) direct the Board to take into consideration "the extent to which" an organization does certain things. Roughly paraphrased these are the extent to which

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[78] *Supra*, 341 U.S. at 722-3.

[79] *Supra*, 339 U.S. at 413-14.

(1) its activities are performed pursuant to directives or to effect the policies of the foreign government or organization in which is vested control of the world Communist movement;

(2) its policies do not deviate from those of such foreign organization;

(3) it receives financial or other ~~aid from~~ such foreign organization;

(4) it sends representatives to a foreign country for instruction in the policies or tactics of the world Communist movement;

(5) it reports to such foreign organization;

(6) its leaders are subject to the disciplinary power of such foreign organization;

(7) it operates on a secret basis for the purpose of concealing foreign domination; and

(8) its leaders consider allegiance to the United States subordinate to obligations to such a foreign organization.

The Party denominates these eight specifications "tests" and, having thus characterized them, attacks them severally and collectively.

The Party says that by the definition in Section 2 of the statute the world Communist movement engages in espionage, treason, etc., whereas none of the eight "tests" to be applied to a domestic organization involves any of those offenses; and that thus the whole of Section 13(e) is irrational. The argument misconceives both the text and the purpose of the section. The inquiry with which the statute as a whole is concerned is in two separate parts: (a) What is the world Communist movement? That is dealt with in Section 2. (b) Is a certain domestic organization under the domination and control of that movement, and does it operate primarily to achieve its objectives? The problem at the first stage of the process is the nature, etc., of a world movement known as Communism. The problem at the second stage of the process is simply whether a named organization operates to

achieve the objectives of the world Communist movement, whatever the nature of that movement may be. The so-called "tests" in Section 13(e) are directed at the latter problem, and it alone. Thus construed, as it obviously was intended to be, the section is apt and cogent. We think the division of the inquiry into two steps is a rational one. Certainly it is followed in many types of inquiry.

The Party says the section is too vague to be valid. We find no such infirmity.

The Party says none of the subparagraphs in Section 13(e) specifies how much of any described activity requires a finding of, for example, foreign control; there is no quantitative standard. This argument is an attempt to make out a formula in the statute. But there is no formula. The ultimate finding is to be derived as a conclusion from basic findings. The Board may find full activities in respect to some of these matters, partial activities in respect to some, and a complete absence of activity in respect to some. The Board may make findings in other relevant respects not here enumerated. Having made these several findings, the Board must distil from the composite an ultimate finding whether the respondent is or is not under foreign control, etc. There is nothing unusual about this process; indeed it is quite elementary. It is a familiar process of adjudication based upon fact-finding. Frequently a case discloses numerous basic facts established by the evidence, upon which the trial tribunal exercises its reasoning power and deduces a derivative or ultimate finding. So in the present case.

Moreover this catalog in Section 13(e) is not exclusive. These eight items must be considered, but others which are relevant and of material effect and are offered in competent form must be considered also. Nothing in the statute hints at an exclusive criterion. The Board should, and so far as we can tell did, admit and consider whatever is competent, relevant and material.

The Party argues that evidence merely of the extent to which a respondent does these specified things does not prove or tend to prove any derivative fact in issue, *e.g.*, domination by a foreign government. The argument is clearly without merit. High blood pressure does not prove heart disease, but any competent doctor examining a suspected bad heart would determine and take into consideration the patient's blood pressure. In legal parlance, evidence must be relevant, *i.e.*, must relate to the issue, and must be material, *i.e.*, must have some weight as proof, but, there is no legal doctrine that each separate item of evidence must be conclusive.

Somewhat contrary to the contentions just discussed, the Party asserts that Section 13(e) establishes presumptions and that the presumptions are irrational. We find no presumptions, and we are at a loss as to how one would spell out a presumption from the text. As aids to an ultimate conclusion the Board is directed to take into consideration the extent to which a respondent does certain things. The statute says nothing about presumptions. As we have just pointed out, it does not even specify what quantum or what character of evidence shall produce a given result. The section is a catalog of some basic considerations. There are no statutory presumptions.

The Party argues that under the statutory definition in Section 3 the basic inquiry is whether an organization operates "primarily" to advance the objectives of the world Communist movement, and that the mere "extent to which" the organization operates to advance such objectives is an irrational and irrelevant test. We are not told how the Board could ascertain whether a respondent operated "primarily" in a given manner without taking evidence upon the extent to which it so operated, and we are unable to discern how it could do so.

We next turn to the contentions in respect to the subparagraphs separately, avoiding as much as possible

repetition of the general contentions already discussed.

The Party says that the "directives and policies test" in Section 13(e)(1) is irrational. It says that the statutory definition of a Communist-action organization in Section 3(3) refers only to organizations which pursue objectives which are "evil", whereas the test section refers to any objectives, good or bad.

We take it that by "evil" the Party means immediate objectives which are morally wrong. In our view the objectives here referred to need not necessarily be "evil" in that sense. If the organization in question is dominated by a foreign government or organization, as the definition prescribes, and operates primarily to advance the objectives of the world Communist movement, as the definition describes that movement, Congress may well impose upon it the sanctions of this Act, even if the active or immediate objectives are not "evil". Some of the objectives of the Soviet Union and of the world Communist movement may be excellent, even laudable; as to that we express no opinion here. If the Soviet Union has policies of peace and racial equality before the law, as the Party says it has, those are laudable objectives. Our Government has those objectives, as do many other governments. The crucial factor in the statute before us is the aim, spelled out in detail, of the world Communist movement to disestablish our system of government. Our Government may well oppose the establishment in this country of a totalitarian dictatorship of the sort described in the definition, even if such a dictatorship does not meet the definition of "evil" or even if it has many beneficent features.

The Party says the "non-deviation test" in Section 13(e)(2) is vague and irrational. We think it difficult to conceive of a more proper standard for the purpose. In an inquiry as to the domination of one organization by another, the extent of the deviation one from the other in views and policies is both relevant and material; indeed it would be one of the necessary considerations. If

there were no similarity, domination would be negatived almost conclusively, whereas, if there were identity, domination would be a definite possibility, if not a certainty. Petitioner says the test includes non-deviation respecting policies calculated to secure peace and welfare as well as others characterized as evil. The argument misses the point of this section of the statute. The point is foreign domination; identity of purpose and policy, whether good or bad, is clearly relevant in the proof. Indeed the Board might conclude on this particular phase of its inquiry concerning some domestic organization that it adheres only to the admirable policies of the foreign organization, a partial non-deviation negativing domination. But the possibility of such a conclusion does not nullify the propriety of the inquiry.

Petitioner says that under the non-deviation test a respondent organization could prove its freedom from foreign domination only by proving its failure to adopt any views contrary to those of the Soviet Union. But this paragraph is not limited to absolute identity of views. We repeat once more that these subparagraphs do not constitute a formula for ascertaining foreign domination; they constitute a catalog of required considerations. They involve "the extent to which"—not "whether". So there is no merit in this contention of the Party. Furthermore, even if the statute required consideration of total identity, the provision would be valid, because, if an organization never had any policy which differed from the policies of the world Communist movement, that fact would certainly be pertinent to an inquiry into the relationship between the two. It might not be conclusive, but it would be pertinent.

Subparagraph (3) of Section 13(e) directs the Board to consider the extent to which a respondent receives "financial or other aid" from the foreign government which directs and controls the world Communist movement. The Party says the inclusion in the test of "or

other aid", vitiates it. But we think not. Any type of aid received by one organization from another is pertinent to the question whether the one operates to achieve the objectives of the other. Petitioner says that, while it is an obvious truth that a contributor has a lever by which to shape the policies of the contributee, the terms of the donation are the relevant consideration and the bare fact of the donation is irrelevant. We agree that the terms of a contribution are more, even much more, material to the issue of intended influence by means of the gift, but the bare fact of the gift is not irrelevant to the consideration. It does not have the persuasive weight carried by the terms imposed by the donor, but the fact of the gift is certainly an admissible item of proof. Of course it may be explained away, as may any of the statutory specifications of considerations.

The fourth subparagraph under Section 13(e) provides that the Board shall consider the extent to which a respondent sends representatives to foreign countries for instruction in the principles or policies of the world Communist movement. The Party says that the section is invalid, because it fails to require that the Board also consider whether respondent is obliged to or does conform to what its representatives were taught. Certainly, if the Board were to make an ultimate finding of foreign domination upon the basis of bare evidence that respondent sent agents abroad, the Party would be perfectly correct upon the point. But the argument does not go to the validity of the subparagraph as such, but merely points to possible rebuttal proof and to a contention which might be addressed to findings made on this item in a particular case.

We think we need not prolong this opinion by discussing in detail the contentions made by our petitioner, the Party, in respect to the remaining four of the subparagraphs of Section 13(e). They are variations of contentions already discussed, and what we have already said applies to them.

IX

The Party says that the order of the Board is invalid because the original appointments of members to the Board were in violation of the Constitution. It says no vacancy had "happened" when the appointments were made, that vacancies did not happen during a recess of the Senate, and that in any event the appointments expired January 2, 1951. The sequence of dates is as follows:

September 23, 1950	Subversive Activities Control Act approved.
September 23, 1950	Congress adjourned or recessed to a day certain.
October 23, 1950	President made recess appointments.
November 27, 1950	Congress reconvened.
November 27, 1950	President transmitted nominations.
January 2, 1951	Congress adjourned *sine die*.
April 23, 1951	Hearings began before panel of three Board members.
August 9, 1951	Senate confirmed nominations.
October 20, 1951	One member retired from panel.
July 1, 1952	Hearings before panel concluded.
July 28, 1952	Briefs and proposed findings filed.
August 6, 1952	Reply briefs filed.
August 14, 1952	Argument before panel.
October 20, 1952	Panel issued recommended decision.
November 21, 1952	Exceptions filed.
November 24, 1952	Exceptions filed.
January 7, 1953	Oral argument before full Board.
April 20, 1953	Report and order of the Board issued. The action of the Board was unanimous, four members signing the order. There was then one vacancy in the membership.

We think we need not discuss this contention of petitioner at length. The minimal effect of any invalidity of appointment upon the final order is obvious from the foregoing table. The appointments were indubitably valid from August 9, 1951. The taking of evidence, which began April 23, 1951, did not conclude until July 1, 1952. The evidence was taken by a panel of members, but it could have been taken by a hearing examiner (Section 13(c) of the Act) and not by a member at all. If prior to confirmation these Board members were merely hearing officers whose taking of the testimony was thereafter ratified by the Board, the proceeding was valid. All findings and conclusions were adopted by a properly confirmed Board after hearing before that Board. The order therefore would be valid regardless of the technical legal status of the members as members prior to formal Senate confirmation. We see no need to examine further the complicated questions posed by petitioner as to constitutional recess appointments.

X

We directed the parties to discuss in a reargument the applicability of the Communist Control Act of 1954 [80] to this proceeding. In respects other than those already discussed we think it has no application. Its validity and the validity of the order before us are independent questions. Either might stand without the other.

XI

We come now to the second main part of the case, consideration of the factual findings of the Board. The problem is whether the Board's ultimate finding that the petitioner in the case at bar is a Communist-action organization within the statutory definition is or is not supported by a preponderance of the evidence in the record.

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[80] Pub. L. No. 637, 83d Cong., 2d Sess., 68 STAT. 775.

The statute says that the findings of the Board as to the facts shall be conclusive if supported by the preponderance of the evidence (Sec. 14(a)). That is a less stringent restriction upon the function of judicial review than is customary in such statutes. By the same token it imposes a laborious task upon the reviewing court. We must ascertain the preponderance of the evidence in respect to the findings as that problem is put to us by our petitioner.

Space does not permit comment upon the evidence on each minute issue of fact, or an attempt here to evaluate particles of the proof. But we can indicate the extent, nature, particularity, and personal character of the testimony presented by the Government, and the nature and extent of the evidence presented by the Party, including the character of both its denials and its explanations.

The Attorney General presented the oral testimony of twenty-two witnesses, nineteen of whom had been members of the Party. Thirteen of these nineteen had been members until 1945 or later, four of them as late as 1952. Some of them voluntarily quit the Party, some were expelled, and some were agents of the F.B.I. and acting as such during their membership.

These witnesses testified in large measure concerning practices prior to the disaffiliation of the Party from the International, but each described operations in the Party up to the time of his resignation or expulsion. They stated their views of the reasons for the present concealment of Party matters such as records, membership, etc., and their views concerning the objectives of the Party and its relationship to the world Communist organization and its leaders.

For illustrative purposes we turn to the witness Philbrick. He was an agent of the F.B.I. who from 1942 to 1944 was a member of the Young Communist League and from 1944 to 1949 a member of the Communist Party.

Thus his entire period of membership was after the disaffiliation of the Party from the International. He held several positions in the League, becoming state treasurer for its successor organization, American Youth for Democracy. He also held a series of positions with the Party, being a member of the State Educational Commission, chairman of leaflet production; then he was educational director of the Eighth Congressional District, and later a member of the "pro group", an underground group of professional people. He organized and taught Party classes. These classes studied how to apply the Communist Classics to current problems. His membership in the Party was never an open membership; at times he carried a card, and at times he did not. He identified by name a number of the Party leaders and described their activities. He described the operations and purpose of the Party builders' conference and a number of the speakers and speeches. The *Daily Worker*, he said, is the central organ of the Party, and every member is supposed to read it. He described the intra-Party lines of communication between groups or cells, and the caution taken in respect to meetings. The sessions of the cells were devoted to study, literature sales, and collection of dues. As literature director he furnished his cell regularly with copies of *For a Lasting Peace, Political Affairs, The Worker, The Daily Worker*, and many books. A principal topic of discussion in early 1948 was Zhdanov's report, which appeared in the *Cominform Bulletin*. Another topic was Yugoslavia and Marshal Tito. He testified that a member of the Party could not disagree with a position taken by the Cominform and remain a member of the Party. He discussed the study of capitalism in the United States as a developer of wars, and the teaching that "the true patriot is the one who fights on the side of the working class and who fights against capitalism." He testified that the basic

objective of the Party while he was a member was "to establish a Soviet State in the United States following, without any deviation, the dictates and the methods laid down by Marx, Engels, Lenin, and Stalin." He did not recall hearing any criticism by leaders of the Party directly against the Soviet Union, or any instance in which, when the policy of the Soviet seemed to differ from the policy of the United States, any leader of the Party appeared sympathetic to the United States.

The testimony of the other witnesses presented by the Attorney General as to the operation of the Party after 1940 covered other phases of the alleged operation, but the foregoing illustrates the specificity and claimed first-hand knowledge from which the witnesses spoke.

On the other side of the controversy, as we have said, the Party presented three witnesses. The testimony of John Gates reveals the tenor of that presentation. In addition to the testimony from Mr. Gates which we have already described, this witness said that he has been a member of the National Committee of the Party since 1945. The immediate objectives of the Party, he said, are the improvement of the democratic rights of the American people, and peace. The ultimate objective is a revolutionary change, the superseding of the capitalist system by a socialist system. The Party advocates the achievement of these objectives by peaceful and constitutional means. Democratic centralism, the principle which governs Party organization and function, means that all Party policies and programs are formulated by participation of every member, and once the policies are formulated, democratically, each and every member is obligated to carry out the decision. Mr. Gates denied (1) that the Party has since January, 1946, been affiliated with any other organization; (2) that it contributed to the Communist Information Bureau; (3) that any rep-

resentative of the Party attended any meeting of that Bureau; (4) that any representative of the Bureau ever visited the Party; (5) that the Party ever received any directive or instruction or any written communication of any kind from the Bureau; (6) that the Party received any directives or instructions from *The Lasting Peace*, the newspaper which published information as to what was going on within the various Communist parties throughout the world; (7) that the Party ever received any instructions or directives from the Communist Party of the Soviet Union, or from any representative of that Party, or from any official of the Soviet Union, or from any Communist Party of any other country; (8) that the Communist Party of the United States ever sent any representative to the Soviet Union or to any other foreign country for instruction or training in Communism; and (9) that the Party reported its policies, etc., to the Soviet Government, the Communist Party of the Soviet Union, the Communist International, or the Communist Information Bureau. He stated that the funds of the Party are obtained entirely from dues, annual collection campaigns, and the sale of literature. In respect to the size of the Communist clubs Mr. Gates testified that there were many discussions, that they were interested in bringing about a 100 per cent activity on the part of the membership, that many Communists were being deprived of their constitutional rights, jeopardizing their means of livelihood, and that for those reasons steps were taken to protect the members, reducing the size of the clubs, eliminating lists of members and membership books. He said that the leaders of the Communist Party of the United States recognize no disciplinary power of the Soviet Government, the Communist International, the Information Bureau, or any agent thereof over an American Communist, that American Communists are not bound by any principle or doctrine to execute the decisions of foreign leaders.

Mr. Gates testified the Communists' position is that the national interests of all peoples on earth are identical; that the Party of the United States formulates its policies on the basis of a scientific approach, consisting of the general principles of Marxism-Leninism, which are general scientific principles to be applied in every situation according to time, place and circumstances; that the policies of the Party of the United States are not in many respects similar to the policies of the Party of the Soviet Union, because the circumstances differ, the United States having a capitalistic system and the Soviet a socialistic system; but that the Party of the United States agrees with the Soviet Party on peace. Mr. Gates said that he owed allegiance to the United States and to it alone.

On cross examination Mr. Gates testified that there is a world Communist movement but not of the kind described in the Attorney General's petition. He said that everything he has done is in the defense of democratic rights, economic welfare, and peace, and ultimately in the interest of the establishment of socialism, which is the first stage toward Communism. The Communist International was an actual organization of the world Communist movement, and the Party of the United States was affiliated with it at one time. He knows of no instance where the *Daily Worker*, while he was editor, supported this government in opposition to the Soviet Union, because it is his opinion that the Soviet has never put forward policies in any way contrary to the interests of the American people. He testified to the same effect in respect to deviation from the policies of Cominform, saying that if the Communists of the United States have expressed no disagreement with the views of *The Lasting Peace* it is because they believe those views have not been in contradiction to the interests of the American people. They consider the Soviet Union to be the out-

standing socialist country of the world. To his knowledge the *Daily Worker* has never disagreed with the views and policies of the Soviet Union. It has been stated many times, although not since 1946, that the Soviet Union is the fatherland of the world proletariat. The witness contradicted a statement made by Earl Browder that during the fifteen years of the Browder leadership all major policies of the Party of the United States had the previous knowledge and consent of the international Communist leadership.

The Party attacks the credibility of the witnesses presented by the Government. In this connection it stresses that some of these witnesses were employees of the Federal Bureau of Investigation while they were members of the Party, that others were expelled from membership in the Party, and that some were under charges of false swearing. Full opportunity for cross examination of these witnesses was afforded at the hearing before the Board, and full opportunity was also afforded for the presentation of rebuttal testimony. The evaluation of credibility is primarily a matter for the trier of the facts, and a reviewing court cannot disturb that evaluation unless a manifest error has been made. Moreover the testimony of the witnesses against whom charges are said to have been made was consistent with and supported by masses of other evidence. Petitioner attacks especially the testimony of the F.B.I. operatives, as being without probative weight because they were Government operatives. But we know of no such doctrine. Government agents, especially detectives, are charged with the duty of observing operations to which they are assigned. Their testimony is a commonplace in our courts. We do not consider employment by the F.B.I. or the mere fact of expulsion from the Party as substantial bases for blanket attacks upon credibility. They might be grounds upon which the trier of the facts would

receive such testimony with caution, but standing alone they do not constitute so serious a detriment to credibility as to be grounds for reversal.

XII

We come, then, to consider the disputed issues of fact. Broadly speaking, these issues concern two subjects, (1) the existence and nature of the world Communist movement and (2) the relationship of the Party USA to the world movement. We divide our consideration accordingly.

In Section 2 of the Act, as we have pointed out, Congress made findings upon the existence and the nature of the world Communist movement. Some years ago, a difference of opinion existed as to the extent to which courts are bound by legislative findings of facts in cases in which constitutional questions are posed.[81] Since then the Supreme Court has resolved the problem in *American Communications Ass'n* v. *Douds* and *Galvan* v. *Press*, both *supra*. The rule, as we understand it, is that, if it appears Congress has power over the subject matter of a statute, and if the findings of fact are not baseless but are based upon extensive investigation, the courts are to adopt those findings. The opinion in the *Galvan* case contains the following statement concerning the section, *i.e.*, Section 2 of the Internal Security Act of 1950, which we are now considering:

> "Under the 1940 Act, it was necessary to prove in each case, where membership in the Communist Party was made the basis of deportation, that the Party did, in fact, advocate the violent overthrow of the Government. *The Internal Security Act of 1950 dispensed with the need for such proof.* On the basis

[81] See the opinions in National Maritime Union of America v. Herzog, 78 F.Supp. 146 (D.C.D.C. 1948).

> of extensive investigation Congress made many findings, including that in § 2(1) of the Act that the 'Communist movement * * * is a world-wide revolutionary movement whose purpose it is, by treachery, deceit, infiltration into other groups (governmental and otherwise), espionage, sabotage, terrorism, and any other means deemed necessary, to establish a Communist totalitarian dictatorship,' and made present or former membership in the Communist Party, in and of itself, a ground for deportation." (Emphasis ours.)[82]

From that viewpoint, and without going further, there is, then, for our purposes in reviewing this order under this statute, a world Communist movement whose purpose it is, by treachery, sabotage, or any other necessary means, to establish a Communist proletarian dictatorship throughout the world.

However the Board did not rely upon the Congressional findings as to these facts but thought it desirable to make independent findings based upon evidence adduced before it. That evidence was largely documentary. We refer here to a few bits of it.

Communism derives its name from Marx's *The Communist Manifesto*. Basic to present-day Communism is Marxism-Leninism. The meaning of Marxism-Leninism is to be found in the writings of Marx, Lenin, Stalin, and their collaborators, which works are known in this litigation as the "Classics". Marxism is a form of Socialism, the basic tenet of which is the ownership by the state of all means of production and distribution. According to Marx all society consists of antagonistic classes, the principal one being the capitalist class, which, as a result of owning privately the means of production, exploits the property-less working class. Marx expressed particular interest in the property-less factory workers, designated as the proletariat, whose numbers had increased

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[82] *Supra*, 347 U.S. at 529.

as a result of industrialization. The conclusion of Marx was that the only true value is the labor of the industrial working class. The objective of Communism is to bring capitalism to an end and to substitute for it a dictatorship of the proletariat in a socialist state.

The Communist Party was formed in 1898 in Russia. Lenin, a Russian revolutionist who had adapted Marxism to Russian revolutionary purposes, had a group within the Communist Party called the Bolsheviks. He recognized that two things were most important to the success of the proletariat revolution: rigidity of organization and flexibility of policy. His group of Bolsheviks obtained control of the Communist Party in Russia. Organizationally he held to the necessity of creating a group of disciplined professional revolutionists, among whom no dissent would be tolerated. After the Russian revolutions of 1905 and 1917 the Communist Party destroyed capitalism in Russia and then sought help throughout the world to support their victory. Following Lenin came Stalin, who further advanced the Marxist-Leninist ideas in a practical way.

In his *Problems of Leninism*, published in 1934, Stalin specified as one of the three fundamental aspects of a dictatorship of the proletariat "The utilisation of the power of the proletariat for the organisation of socialism, for the abolition of classes, and for the transition to a society without classes, to a society without a state." He stressed the necessity for violence, asserting: "But, of course, the dictatorship of the proletariat does not merely mean violence, although there is no dictatorship without violence." He quoted Lenin to the same effect. In his *Foundations of Leninism*, published in 1939, Stalin referred to a phrase used by Marx which seemed to indicate that Marx conceded the possibility of a peaceful evolution in certain countries outside of the European Continent. But, said Stalin, Lenin pointed out that ondi-